

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR
HARD COPY AT THE TIME OF FILMING.
IF AND WHEN A BETTER COPY CAN BE
OBTAINED, A NEW FICHE WILL BE
ISSUED.

86-732
CASE NO.

Supreme Court, U.S.
FILED

OCT 16 1986

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ROY P. BRIEHLER,
Petitioner

v.

TOWN OF JAMESTOWN, ET. ALS.,
Respondents

On Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

PETITION FOR WRIT OF CERTIORARI

Roy P. Briehler
Petitioner - Pro Se
1740 N. Olden Ave.
Trenton, N.J. 08638

56PP



QUESTIONS PRESENTED

1. Is a federal pretrial proceeding, which itself deprives a plaintiff of due process of law and denies a plaintiff equal protection of the law, and which results in the absolute and substantial deprivation of plaintiff's property, business, and leasehold rights, (which said rights were confiscated in the first instance by the defendants without due process of law to plaintiff and in violation of 42 U.S.C.A. Section 1983), and which results in the denial of plaintiff's right to trial by jury on the merits of his claims, Constitutional?
2. Is it a manifest abuse of judicial discretion to deny a plaintiff a change of venue in the interests

of justice and of obtaining a fair and impartial trial, when denial thereof sanctions the imposition of conditions upon the plaintiff which are not authorized by reason and by law?

3. Is it an error to deny an entry of default against defendants who have either failed to serve their answers or defenses upon the plaintiff within twenty days or have failed to appear in the action at all?

PARTIES

Petitioner - Roy P. Briehler, Pro se

Respondents

Town of Jamestown, a municipal
corporation of the State of
Rhode Island

Jamestown Waterfront Authority -(JWA)-
a body politic of the Town
of Jamestown

Robert W. Sutton, Jr., individually
and in his capacities as
Town Administrator, Tax
Collector, and Finance Director
of the Town of Jamestown

G. Quentin Anthony, Jr.,
individually and in his
capacities as Jamestown
Solicitor, incorporator of
Savings Bank of Newport,
attorney for Burgin and
Estes-Burgin Partnership

James Hyman, individually and in
his capacities as former
Jamestown Solicitor

William W. Miner, individually
and in his capacities as
former chairman of the
Jamestown waterfront Authority
and member of the R.I.
Coastal Resources Mgmt. Council

Jerry L. McIntyre, individually
and in his capacities as
President of Jamestown Town
Council and member of JWA
and co-owner, attorney for
Poseidon Venture, Inc..

Kenneth C. Abrahamson and
Anthony J. Vieira, individually and
in their capacities as Town
Councilmen, former Presidents

of Town Council, members
of JWA

Arthur S. Clarke, III, individually
and in his capacities as
vice President of Town Council
and corporator of Savings Bank
of Newport

Michael F. Smith, individually and in
his capacities as former President
of Town Council, member of JWA,
and former partner with R.I.
Representative Dickinson

Alton Head, III,
John F. Doyle, Jr.,
Walter W. Carr,
Harold E. Shippee,
Myles A. O'Hara,
Edward F. Morinho,
Edward M. Holland,
Barbara J. Conn,
Charlotte S. Richardson, and
John T. Heelan, Jr., individually and in
their capacities as present or past
members of the Jamestown Town Council

Richard Zimmermann, individually and in
his capacity as Jamestown Engineer

Gerald v. woodbine,
David C. Norton, and
Walter E. Thierfelder, individually and in
their capacities as Jamestown Tax
Assessors

James G. Pemantell, individually and in his
capacity as Chief of Jamestown Police

Arthur Spadon,
Michael Balzer, and
Thomas Tighue, individually and in their
capacities as Jamestown Police
Officers

Chas. J. Dowling, Jr., individually and
in his capacity as Jamestown
Building Inspector

Frank Brasil, individually and in his
capacity as Superintendent of
Jamestown Public Works, Hwy. Dept.

William S. Munger, individually and in his capacities as Jamestown Harbormaster, operator of Conanicut Marina and President of Conanicut Marine Services, Inc. (illegal trespassers on Brierhler's leased premises)

Meredith & Clarke, Inc.,
 Conanicut Marine Services, Inc.,
 Sylvia's, Inc.,
 Pitcher's, Inc.,
 Poseidon Venture, Inc.,
 Pot Luck, Inc.,
 The Savings Bank of Newport/Newport County Trust Co., and
 Coddington Yacht Centers, Inc., R.I.
 corporations and illegal trespassers and encroachers on the leased premises

Estes-Burgin Partnership,
 Clarke's Marine,
 Pal's Treat Shoppe,
 Village Casuals,
 Marina Cafe, and
 P & M Marine Services, R.I. businesses and illegal trespassers and encroachers on the leased premises

Fred C. Clarke, Jr., individually and in his capacities as President of Meredith & Clarke, Inc. and corporator of the Savings Bank of Newport

Joseph Perry, individually and in his capacities as President of Sylvia's, Inc.

William Burgin, individually and in his capacities as President of Poseidon Venture, Inc., partner in Estes-Burgin Partnership

James Estes, individually and in his capacities as partner in Estes-Burgin partnership

John Sweeney and

Peter Stone, individually and in their capacities as owner/operators of Coddington Yacht Ctrs.

Christopher Bannister, individually and in his capacity as operator of Clarke's Marine

Barbara Szepatowski, individually and in her capacity as owner/operator of Pal's Treat Shoppe

Dominic Turillo, Individually and in his capacity as bar operator in Bay View Hotel (illegal trespasser and encroacher upon leased premises)

Frances Smith, individually and in her capacities as owner/operator of Village Casuals

Fred Pease and

Stephen Moreau, individually and in their capacities as owners of P&M Marine Services, Inc.

Alma Davenport and

Richard Fleskitt, individually and in their capacities as owners of Marina Cafe

Spencer E. Dickinson, individually and in his capacity as former member of JWA, State Representative, and owner of Bayview Hotel

Albert J. Smith, individually and in his capacities as owner of Pitcher's, Inc. and former member of JWA

William J. Brayman,

Robert L. McMaster,

Richard A. Wing,

Francis A. Rembijas,

Norma B. Willis,

William Winslow,

Donald Richardson, and

Joseph W. Tiexiera, individually and in their capacities as present or former members of the JWA

Henry W. Brownell,

William Harrington,

Robert W. Wrathall,

William W. Corcoran,

Francis G. Dwyer,
 Robert Kempenaar,
 David P. Leys,
 Richard B. Sheffield,
 J. Timothy O'Reilly,
 Joseph J. Nicholson,
 Joseph L. Nunes, Jr.,
 Caesar A. Spero, Jr.,
 Oliver F. Tisdall,
 Ernest R. Vieira, individually and in
 their capacities as officers and/
 or directors and/or trustees of
 The Savings Bank of Newport/
 Newport County Trust Company.
 Kenneth Parish and Donna Parish d/b/a
 Ken's East Landing (illegal
 trespasser and encroacher with
 Briehler's lease)

TABLE OF CONTENTS

	<u>Page</u>
Questions presented for Review . .	i
Parties.	iii
Table of Contents.	vii
Table of Authorities.	ix
Decisions Below.	1
Basis for Invoking Jurisdiction . .	1

<u>TABLE OF CONTENTS (cont.)</u>	<u>Page</u>
Constitutional Provisions.	2
Statement of the Case.	4
Basis for federal jurisdiction	4
Nature of the Action.	4
Statement of Facts.	6
Procedural History.	17
Argument - Reasons for Granting	25
Certiorari	
Conclusion:	37
Appendix.	A-1 - A-8

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Armstrong v. Manzo</u> , 380 U.S. 545, 552	27
<u>Beacon Theatres Inc. v. Westover</u> , 359 U.S. 500, 3 L.Ed.2d 988, 997, 998, 79 S.Ct. 948	33
<u>Carpenter v. Winn</u> , 31 S.Ct. 683, 221 U.S. 533	31
<u>Communist Party of the U.S. v.</u> <u>Subversive Activities Control</u> <u>Bd., App. DC</u> , 76 S.Ct. 663, 351 U.S. 115	31
<u>Puentes v. Shevin</u> , 407 U.S. 67	27, 28
<u>Harkness v. Sweeny Ind. School</u> District, D.C. Tx., 91 S.Ct. 451, 400 U.S. 991	33
<u>Hartford Steam Boiler Inspection &</u> <u>Ins. Co.</u> , 301 U.S. 459, 81 L.Ed. 1223, 57 S.Ct. 838	30
<u>Holden v. Hardy</u> , 169 U.S. 390, 391	27
<u>Joint Anti-Fascist Refugee</u> <u>Comm. v. McGrath</u> , 341 U.S. 123, 170-172	29
<u>Lynch vs. Household Finance</u> <u>Corp.</u> , 405 U.S. 538, 552	28
<u>Mullane v. Central Hanover</u> <u>Trust Co.</u> , 339 U.S. 314	28
<u>Sniguach v. Family Finance</u> <u>Corp.</u> , 395 U.S. 337, 342 (1969)	27

<u>Societe Internationale v. Rogers</u> 357 U.S. 197, 211	33
<u>Trinity Episcopal Corp. v.</u> Romney, D.C.N.Y., 387 F.Supp. 1044, 1084	27
<u>Truax v. Corrigan</u> , 257 U.S. 312, 66 L.Ed. 254, 27 ALR 375	30
<u>U.S. v. Smith, D.C. Iowa</u> , 249 F.Supp. 515, 516	27
Amendments to the U.S. Constitution Fifth and Fourteenth	26, 35

DECISIONS BELOW

The Order of the United States Court of Appeals for the First Circuit, entered on July 8, 1986, which is reprinted in the appendix at A-1 through A-4 and is not reported, affirmed the Orders of the United States District Court, District of Rhode Island, which are reprinted in the appendix at A-5 through A-7 and are not reported.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1254(1).

The affirmation by the United States Court of Appeals for the First Circuit of Orders of the United States District Court, District of Rhode Island, has so far sanctioned a departure by the lower court from the accepted and usual course of judicial proceedings; has

decided the Constitutional question of deprivation of due process of law in a manner which conflicts with applicable decisions of this Court; serves to deprive Petitioner altogether and forever of his substantial property, business, and leasehold rights; serves to deny Petitioner the right of trial by jury; and, depends on erroneous findings of fact for which there is no evidence whatsoever on the record, while at the same time it is apparent on the record that there does exist substantial evidence to the contrary, so as to call for an exercise of this Court's power of jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. CONSTITUTION OF THE UNITED STATES - Amendment V

"No person shall be. . .deprived of life, liberty or property, without due process of law; nor

shall private property be taken for public use, without just compensation."

2. CONSTITUTION OF THE UNITED STATES -
Amendment VII

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . ."

3. CONSTITUTION OF THE UNITED STATES -
Amendment XIV

Section 1:

" . . . Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4. 42 U.S.C.A. 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, . . . subjects, or caused to be subjected, any citizen of the united states or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . ."

STATEMENT OF THE CASE

BASIS FOR FEDERAL JURISDICTION

The jurisdiction of the United States District Court for the District of Rhode Island was invoked pursuant to 28 U.S.C. 1332 under diversity of citizenship with the amount in controversy in excess of \$10,000.00. The plaintiff is a citizen of the State of New Jersey; all of the defendants are citizens of the State of Rhode Island.

.

NATURE OF THE ACTION

This matter evolves from United States District Court, District of Rhode Island, Civil Action No. 84-0230, Roy P. Briehler vs. Town of Jamestown,

Et. als., wherein plaintiff sought compensatory, special, exemplary, and punitive damages for defendants' intentional violations of 42 U.S.C. 1983; intentional deprivations to plaintiff of due process of law; tortious interferences with plaintiff's lease with the State of Rhode Island and the defendant Town of Jamestown, with plaintiff's leasehold rights, with his businesses, and with his economic benefits and advantages; defendants' wrongful trespasses and encroachments in and upon plaintiff's leased premises; for defendants' illegal conversion of plaintiff's property (having a fair market value in excess of \$90,000.00) with no due process of law to plaintiff; for defendants' arbitrary discriminatory assessment and collection of taxes upon the ferry boat "THE NARROWS", owned by plaintiff's corporation, and/or upon the property aboard the

ferry boat, while assessing and collecting taxes on no other boat, vessel, or ship, or personal or tangible property thereon; and for defendants' malicious prosecution against plaintiff.

STATEMENT OF FACTS

On June 27, 1970, the State of Rhode Island and Providence Plantations acting by and through its Department of Natural Resources, entered into a License Agreement with the defendant Town of Jamestown, a municipal corporation of the State of Rhode Island, leasing to the said Town, for one dollar (\$1.00) per year, ". . . certain real estate acquired by it for ferry purposes. . .", which said real estate had been part of the State's Highway system, State Highway no. 138, and which said premises had been used by the Newport-Jamestown

Ferry Authority before the construction of the Newport Bridge and the subsequent abandonment of ferry operations between Newport and Jamestown, ". . . together with all buildings and improvements thereon. . .", ". . . to extend until such time as the aforescribed premises cease to be used by the licensee as a coating facility at which time this license shall be terminated", and with the right to assign or sub-lease same.

Beginning in 1971, the State of Rhode Island and the defendant-appellee Town of Jamestown actively invited and induced and encouraged plaintiff, a New Jersey citizen, to invest in, and to bring his personal and corporate assets (including the U.S. Coast Guard documented ferry boat "THE NARROWS") to the State of Rhode Island. The State of Rhode Island and the Town of Jamestown offered substantial inducements to plaintiff-

appellant Briehler, including, but not limited to, permits, licenses, agreements, and guarantees which granted plaintiff-appellant Briehler the right to locate, develop, and operate all of Briehler's personal and corporate efforts - namely, a Ferry boat hotel, restaurant, and cocktail lounge, shopping, banking, marina, seaplane operation, shipping, and ice cream manufacturing - in and upon those premises and water area "used and useful" by their ferry systems.

Paramount to plaintiff-appellant's consideration of investing his and his corporations' assets in Jamestown, Rhode Island, was the drafting, by the defendant Town of Jamestown, of a valuable twenty-five-year lease between plaintiff-appellant Roy P. Briehler and the defendant-appellee Town of Jamestown and the State of Rhode Island which extends until 1996. Said lease was accepted and approved

by the State of Rhode Island.

On November 8, 1971, the Town of Jamestown ~~leased~~ the aforescribed ferry premises and water area to Briehler for a period of twenty-five years at a rental of One Dollar (\$1.00) per year. Said lease was made "subject to the agreement between the State of Rhode Island and the Town of Jamestown dated _____, 1970."

Under the terms of the lease, the Town of Jamestown and the State of Rhode Island provided Briehler with the ferry slip known as the South Slip situated at Ferry Wharf, "including the water area, pilings, apron, loading ramp, mechanical and electrical devices, used and useful in connection therewith, together with the right to install and maintain mooring devices, floats and loading ramps from said slip in connection with the docking of a ferry boat in that slip. . ." (Chief Justice

Bevilacqua, Rhode Island Supreme Court, May 13, 1983).

The Town of Jamestown agreed, "not to reduce the parking area at Ferry Wharf" and "not to use or permit to be used the remaining Ferry Slip for a business or purpose which shall be similar or competitive to the business conducted by Lessee on the leased premises."

There were no leases on said premises prior to Briehler's lease with the Town of Jamestown and the State of Rhode Island.

Briehler believed - and had every right to believe - that the Town and the State had entered into the lease agreement with him in good faith. Based upon that belief, over the subsequent twelve years, Briehler invested over \$200,000.66 in working capital in the State of Rhode Island

and the defendant Town of Jamestown for the development of East Ferry in Jamestown and for the conversion of the ferry boat "THE NARROWS" into, and for the operation of, a floating hotel with forty staterooms aboard, a fully-equipped restaurant, and a fully-equipped cocktail lounge. He announced his plans to erect a new bank at Ferry Wharf. His New Jersey corporation purchased a schooner to be used for cruises in conjunction with the hotelship on East Ferry and in the water area used and useful in connection therewith.

Briehler's leased premises, which were badly deteriorated and which had been abandoned by all but hoodlums and drug dealers when Briehler first entered in and upon them, evolved over those years into a unique tourist attraction which attracted visitors from all over the United States and

foreign countries and which was written about in national publications. Through Briehtler's efforts and investments, his leased property and water area and leasehold rights evolved into a readily-recognizable valuable and highly-coveted asset.

Subsequent to Briehtler's announcement of his plans to erect a new bank at the ferry wharf in Jamestown, defendant-appellee Savings Bank of Newport/Newport County Trust Co. (which had planned to construct a bank branch office in Jamestown some three or four miles from ferry wharf) blocked and prevented Briehtler from going forward with his plans to open a new bank at ferry wharf and did change the site for its own branch office, building said bank branch, instead, on the former ferry parking lot used exclusively by Briehtler, competing

with Briehler's banking interests, reducing Briehler's parking, and failing to replace that said parking or to compensate Briehler for same.

Thereafter, beginning in or about the mid-1970's, and until the filing of the instant action in U.S. District Court in Rhode Island, the defendant Bank - by way of its attorney, directors, officers, and corporators (many of whom simultaneously/occupied, and do occupy, official positions with the defendant Town of Jamestown and with the State of Rhode Island) - acting with conflicting interests and in conspiracy and in concert with the other defendants, used various Town and State offices, the Rhode Island Court system, and positions of public trust to cover-up the Bank's illegal and unconstitutional trespasses and encroachments and interferences with Briehler's lease and leasehold, business, and property rights.

The defendants, and each of them, jointly and severally, in bad faith, and with ill will, and bearing actual hatred for Briehler, intentionally and systematically and tortiously, in the mid-1970's, embarked upon a carefully-calculated plan of action whereby they used their public offices with the defendant Town of Jamestown, often with public funds, the Rhode Island Courts, their positions as officers of the court, and their positions of public trust, to take away all that the town and state had leased and promised and guaranteed to Briehler in 1971 - for their own private use and enrichment. By February of 1983, Briehler's landlords - the said state and defendant town - had taken away all of the property, premises, and facilities that they had leased to Briehler in 1971; had taken away all of the rights which they had

guaranteed to Briehler in 1971; and, had confiscated all of plaintiff's personal and corporate assets - all with no due process of law whatsoever to Briehler. (List of defendants' deprivations of rights to Briehler and of their tortious interferences with Briehler's lease and with his leasehold and businesses - Schedule A). (The Court is also referred to U.S. Supreme Court, Case No. A-763 (85-1227) regarding defendants' unconstitutional and illegal confiscation of the ferry boat-hotel and restaurant, "THE NARROWS", owned by plaintiff's corporation.

To insure that Briehler could not regain possession of his confiscated property and confiscated business and leasehold rights, Briehler's landlords - the defendant Town of Jamestown and the State of Rhode Island - brought frivolous State criminal charges against Briehler for his alleged "trespass" on the water area leased to him by those said landlords.

Briehler's landlords have continued to prosecute said charges against Briehler since 1983, and in 1984, without probable cause, issued an arrest warrant against Briehler which remains outstanding, thereby guaranteeing that Briehler could not prosecute his substantial Constitutional claims in the U.S. District Court in Rhode Island, as he would be arrested and held in jail if he entered the State.

Defendants, and each of them, in conspiracy with one another, have actively participated in criminal racketeering enterprise, threatening Briehler with physical harm if he continued to operate his businesses and to occupy the premises leased to him until 1996, and threatening him with arrest and detention in prison if he enters the State of Rhode Island to prosecute his federal claims.

Defendants have actively participated in theft by deception for their own

private commercial enterprises in and upon Briehler's leased premises, refusing to compensate Briehler for same, and depriving Briehler absolutely of his property and of his business and leasehold rights with no due process of law.

PROCEDURAL HISTORY

On May 15, 1984, Petitioner filed C.A. No. 84-0230 P in United States District Court, District of Rhode Island, pro se, demanding a trial by jury.

Thereafter, Briehler filed several Motions for Entry of Default against various defendants - all of whom were and are illegal trespasses and encroachers in and upon Briehler's leased premises - for their failure to serve an answer or defenses upon the plaintiff, or to otherwise appear, within 20 days, as required by the Federal Rules of Civil Procedure. In response to Briehler's

Motions for Entry of Default, some of the defendants filed answers out of time, with one defendant filing an answer some five months after the time for answering or otherwise pleading had expired. Some five defendants failed to appear or answer or defend at all.

The Court denied Entry of Default against any of the said defendants - even against those who failed to file an answer in some two years.

On November 6, 1984, Briehler filed a Motion for Change of Venue, in the interests of justice, as prosecution of his claim in the District of Rhode Island was futile, and Briehler could not obtain a fair and impartial trial in that said District. Said Motion was denied without explanation.

In June of 1985, four attorneys filed frivolous identical Motions to Dismiss even though the same Motions to Dismiss,

filed by the same attorneys, were denied by the Court some two months prior with the Court stating, " this cause of action was not scheduled for hearing before magistrate Hagopian."

On July 15, 1985, the Deputy Clerk telephoned Briehler's New Jersey office and left a message that a hearing was to be held four days later on the said frivolous Motions to Dismiss. The Clerk was advised by Ms. Kay worthington that Briehler (who is a U.S. Coast Guard licensed Sea Captain/Ocean Operator and operates a charter cruise business out of Miami, Florida) was out to sea and that she did not know whether he would call in to the New Jersey office in that short three-day period. Briehler did not contact his office in those three days.

Therefore, on July 18, 1985, Ms. worthington telegraphed magistrate

Hagopian that "Briehler didn't receive notice" and she further purchased Western Union's telephone service which telephoned the message to the Court within the hour of purchase. The physical paper telegram was delivered to the Court on July 18, 1985 to confirm the western union telephonic message and to act as a back-up notice.

Briehler received no notice at all of the alleged motion hearing.

On July 23, 1985, Magistrate Hagopian filed a Report and Recommendation wherein he recommended dismissal of Briehler's claim "for either lack of prosecution or for failure to comply with a lawful order of this Court".

Briehler objected to said Report which contained falsehoods and inaccuracies.

Meanwhile, discovery was conducted, with the defendant Bank alone submitting some half-dozen sets of interrogatories

and "additional interrogatories".

Briehler filed timely and fully-responsive answers to all of defendants' questions.

As a further responsive supplement to his answers to interrogatories, on October 22, 1985, Briehler filed with the Court 634 Exhibits which prove plaintiff's claims on the papers.

On November 1, 1985, plaintiff received a Memorandum, dated October 29, 1985, from Magistrate Hagopian stating that on October 15, 1985, J. Pettine had issued a conditional Order of Dismissal of Briehler's action ". . .to be effective on October 28, 1985. . .so as to allow plaintiff or his counsel a final opportunity to appear before the undersigned magistrate on outstanding discovery motions." The memorandum further stated that "the plaintiff was duly noticed for hearing to be held at 10:00 a.m., Oct. 28, 1985. . ."

Plaintiff and/or plaintiff's office received no notice whatsoever - either by mail or by telephone - from the Court that a hearing had been scheduled for October 28, 1985 until November 1, 1985 - four days after the hearing was allegedly held - by way of the Magistrate's Memorandum not a notice of hearing.

Plaintiff received no copy of J. Pettine October 15th. order of conditional dismissal and order for hearing on October 28, 1985 until November 20, 1985 - more than one month after said Order allegedly issued.

Briehler has prosecuted his very substantial and well-documented constitutional claims diligently and obeyed all Orders of the Court of which he was given notice.

The matter was never scheduled for trial. Four defendants remain in default, having failed to appear in two years'

time. The Court has failed to enter default judgments against them.

Briehler filed a Notice of Appeal on November 6, 1985. Thereafter, he filed a Motion with the First Circuit Court of Appeals to direct the United States District Court, District of Rhode Island, to supplement the record with the green Return Receipt cards for the two Express Mail notices which the Magistrate claimed he sent to a Florida marina dock office - not to plaintiff's address of record - on July 15, 1985, and the green Return Receipt card for the notice allegedly mailed via certified Mail on or about October 28, 1985, as said green Return Receipt cards will prove beyond any doubt that Briehler did not receive notice of any hearing, and that the Magistrate was well aware that Briehler had not received any notice whatsoever.

In response to Briehler's Motion, the Clerk of the Appeals Court telephoned the Rhode Island federal court and was advised that the United States District Court, District of Rhode Island, Magistrate Hagopian does not now have any green return receipt cards that he alleged to Justice Pettine that he had.

Briehler also filed a Motion in the First Circuit Court of Appeals to direct the U.S. District Court in Rhode Island to supplement the record with his six separate sets of Answers to Interrogatories filed with the Court and with his 634 Exhibits filed with the Court. In response thereto, the district court advised the Appeals Court that plaintiff Briehler had not filed any exhibits. Briehler then forwarded to the Appeals Court his letters of transmittal of the said Exhibits to the district court in Rhode Island and

copies of the two signed green return receipt cards, proving that the district court in Rhode Island had received same. On March 13, 1986, the Chief Deputy Clerk of the First Circuit Court of Appeals advised Briehtler that the district court in Rhode Island had telephoned and "... advised that they were mistaken and that they had the 634 exhibits."

On July 8, 1986, the First Circuit Court of Appeals affirmed the Order of Dismissal, the Order denying Change of Venue, and the orders denying entry of default against defendants who had either failed to answer in a timely manner or had failed to answer at all in two years.

ARGUMENTS

1. The First Circuit Court of Appeals has so far sanctioned repeated departures by the United States District Court, Rhode Island, from the accepted and usual course of judicial proceedings and has decided the Constitutional questions of deprivation of due process of law

... and deprivation of equal protection of the law, by the district court itself, in a manner which is in absolute conflict with the applicable decisions of this Court.

The precedents established by this Court not only do not support the decision by the U.S. First Circuit Court of Appeals, but require its reversal.

Deprivation of due process of law is unconstitutional in all circumstances, and is especially sinister when repeatedly practiced by a United States Magistrate who is sworn to uphold and protect the Constitution and its principles.

The Fifth and Fourteenth Amendments to the Constitution of the United States guarantee that no individual shall be arbitrarily deprived of his property without due process of law,

i.e., without reasonable notice and without the opportunity to be heard and to present a defense, at a meaningful time and in a meaningful manner, before the deprivation of his property rights. Armstrong v. Manzo, 380 U.S. 545, 552 (1965); Sniadach v. Family Finance Corp., 395 U.S. 337, 342 (1969); U.S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516; Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084; Fuentes v. Shevin, 407 U.S. 67 (1972).

Due process of law is based on fundamental and inherent principles of justice.

In Holden v. Hardy, 169 U.S. 390, 391, the Court held:

"Recognizing the difficulty in defining, with exactness, the phrase 'due process of law', it is certain that these words imply a conformity with natural and inherent principles of justice and forbid that one man's property

or right to property, shall be taken for the benefit of another . . . without compensation; and that no one shall be condemned in his person or property without an opportunity of being heard in his own defence."

According to the principles of due process of law, the notice of a proceeding must be reasonable, meaningful, appropriate, and in keeping with settled practice.

" . . . the right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce, or contest." Mullane v. Central Hanover Trust Co., 339 U.S. 314.

In Fuentes v. Shevin, 407 U.S. 67, U.S. Justice Stewart delivered the Opinion of the Court, stating:

" . . . the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference. See Lynch v. Household Finance Corp., 405 U.S. 538, 552. . .

"It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . And no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.' Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 170-171. . .

"If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred."

In the instant matter, the record is clear that the U.S. Magistrate of the District Court in Rhode Island deliberately withheld notice of hearing until well after said hearing was allegedly held, and then he knowingly lied in his

Report and Recommendation that the
Petitioner had received notice.

Said intentional deprivations of due
process of law and the subsequent cover-
up of same by a United States Magistrate
are unquestionably unconstitutional and
cannot be tolerated.

The rights of all persons must rest
upon the same rules and modes of procedure
under the same circumstances, both in
privileges conferred and in liabilities
imposed. Hartford Steam Boiler Inspection
Ins. Co. v. Harrison, 301 U.S. 459;
Truax v. Corrigan, 257 U.S. 312.

While the actions of the Rhode Island
District Court deprived Petitioner of
his rights of due process of law, the
court
same^{court} held, and the Appeals Court affirmed,
that the established Federal Rules of
Civil Procedure as to defendants'
unjustifiable failure to file
an answer or defenses to a complaint,

properly served upon the said defendants, as proscribed by the Rules of Civil Procedure, have no meaning and do not apply to these particular defendants. This affirmation by the Appeals Court implies that the Constitution of the United States may be arbitrarily upheld and protected by officers of the Court in some, but not all, circumstances. It implies that Constitutional guarantees may be arbitrarily denied in some circumstances.

That is clearly incorrect.

Certiorari properly lies in the instant matter as Petitioner is calling upon this Honorable U.S. Supreme Court to determine Constitutional questions. Communist Party of the U.S. v. Subversive Activities Control Board, App.D.C., 76 S.Ct. 663, 351 U.S. 115, and to determine a question of federal pretrial procedure, Carpenter v. Winn, 31 S.Ct. 683, 221 U.S. 555.

The First Circuit Court of Appeals has sanctioned a federal pretrial proceeding which is not just a mere departure from accepted and usual judicial proceedings, but which is unconstitutional, conducted without due process of law to plaintiff and denying the plaintiff equal protection of the law, and which resulted in an order of Dismissal which is conclusive of Petitioner's substantial property, business, and leasehold rights, and which denies petitioner the right of trial by jury. Said sanction by the Appeals Court conflicts with the applicable decisions of this Court.

- . II. The question of the First Circuit Court of Appeals sanctioning the district court's employment of unconstitutional pretrial procedures, which serve to shield defendants (officers of the Court and local politicians, from liability for their unconstitutional and tortious actions, and which serve to deny plaintiff the right to have his

substantial and well-documented constitutional claims decided by a jury at a trial on the merits, and which serve to permit unrestrained theft and fraud by government, is a substantial question of general importance.

There are Constitutional limitations upon ~~the power~~ of the Courts to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause. Societe Internationale v. Rogers, 357 U.S. 197, 211.

Petitioner is entitled to a Writ of Certiorari to protect his right of trial by jury on the merits of his constitutional claims guaranteed by the Seventh Amendment of the Constitution of the United States and which is preserved by Rule 38 of the Fed.R. Civ. Procedure. This guarantee cannot be suspended in the absence of "imperative circumstances". Beacon Theatres Inc. v. Westover, 359 U.S. 500; Harkness v. Sweeny Ind. School District, D.C.Texas, 400 U.S. 991.

There are no such "imperative circumstances" in this instant action which would justify denial of the right of trial by jury on the merits to Petitioner.

The State of Rhode Island and the Respondent Town of Jamestown invited Petitioner, a new Jersey citizen, to bring his assets to, and to invest in, the said Town and State, offering Petitioner Briehler substantial inducements including a lease until 1996, licenses, permits, and guarantees. Thereafter, Briehler's landlords - the said Town and State - took away all of the property, premises, and facilities that they had leased, and all of the rights that they had guaranteed, and confiscated all of Briehler's assets - all without due process of law to Petitioner.

to guarantee that Briehler could not regain his confiscated property and his confiscated leasehold and business rights,

Briehler's landlords (the State and the Town) brought frivolous State criminal charges and signed an arrest warrant, without probable cause, against Briehler for Briehler's alleged "trespass" in and upon the water area leased to him by those said landlords (the State and the Town) until 1996.

If such brazen and arbitrary theft and deception by government - for private gain and enrichment by individual government and court officials- is sanctioned by the Courts, then no investment can be safe in this country. The free enterprise system necessarily depends upon the Fourteenth Amendment's guarantee that private property is safe from arbitrary confiscation without due process of law. Free enterprise must continue to be protected from arbitrary confiscation and from tortious interferences by government officials

and officers of the court.

One of Americans' collective self-perceptions has been that private property is safe from arbitrary confiscation without due process of law. American society places considerable value on notions of due process of law and of the right to trial by jury. Americans generally believe that "the Law" rests on principles of fairness and honesty and equal justice for all, and is subservient to the Constitution, to statutes, and to precedent.

The First Circuit Court of Appeal's sanction of the unconstitutional conduct and procedures and abuses of discretion by the U.S.

District Court in Rhode Island is an important, albeit unfortunate, example of a Court's rejection of precedent and continuity and Constitutional guarantees.

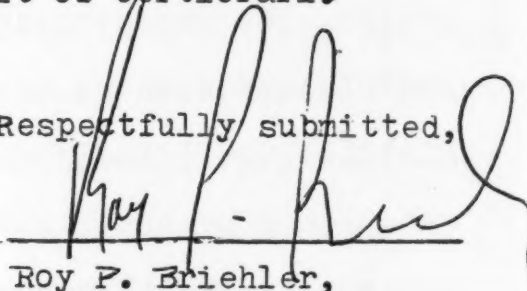
CONCLUSION

Justice has not been served in this action. The Unconstitutional federal pretrial procedures employed by the U.S. District Court in Rhode Island, and sanctioned by the First Circuit Court of Appeals, which served to protect government officials and officers of the Court from liability for their Unconstitutional and illegal and tortious shenanigans, and which served to deny equal protection of the law and the right of trial by jury and due process of law to Petitioner, shock the sense of fair play and undermine the Constitution of the United States.

Petitioner has suffered, and will continue to suffer, manifest injury and a grave miscarriage of justice if certiorari is not granted. Petitioner is left with no other remedy available to him.

Equity and reason warrant the
issuance of a writ of certiorari.

Respectfully submitted,



Roy P. Briehler,
Petitioner, Pro Se
1740 N. Olden Ave.
Trenton, N.J. 08638
(609) 771-0236

A-1

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 85-1930

ROY P. BRIEHLER,
Plaintiff, Appellant

v.

TOWN OF JAMESTOWN, ET. ALS.,
Defendants, Appellees

JUDGMENT

Entered: July 8, 1986

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Rhode Island.

Upon consideration whereof, it is now here ordered, adjudged, and decreed as follows: The Order of the District Court is affirmed.

By the Court:
Francis P. Scigliano,
Clerk

By: Richard W. Gordon
Chief Deputy Clerk

Not for Publication

Before

Campbell, Chief Judge,

Breyer and Torruella, Circuit Judges

Per Curiam. Three issues are raised in this appeal from the district court's dismissal of appellant's pro se action against eighty-eight defendants.

First, appellant asserts that the district court was in error in dismissing the case for lack of prosecution. Given appellant's failure to respond to court orders, his failure to appear at a hearing on motions to dismiss filed by sixty-nine defendants, and his previous failure to prosecute another action in the ssme court which resulted in a dismissal for lack of prosecution affirmed by this court, See Briehler v. Sylvia's, Inc., no. 85-1421 (1st. Cir. 9/12/85), we find no abuse of discretion in the judgment of dismissal. Contrary

to appellant's contentions on appeal,
the record makes clear that the district
court took pains to provide appellant
with timely notice of the hearing on
the motions to dismiss.

we find no error in the district



court's denial of appellant's motion for a change of venue from the District of Rhode Island to the District of New Jersey. Since appellant's complaint states that all eighty-eight defendants are found in Rhode Island, and the acts complained of in the complaint all took place there, there was no basis for a transfer of the case.

Finally, we cannot accept appellant's contention that the district court erred in denying motions for default judgment he filed against a number of defendants, and in granting defendant Coddington Yacht Center, Inc.'s motion to set aside default, if any. As to none of these defendants had a default been entered by the clerk prior to appellant's motion for judgment. See Fed.R.Civ.P. 55. Some of these defendants, also, had appeared in the action but, so far as appears from appellant's motions, were not served with written notice of the motions for judgment as is required by Fed.R.Civ.P.

A-4(a)

55(b)(2).

Affirmed.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

ROY P. BRIEHLER

v.

TOWN OF JAMESTOWN, et al.)

}

)C.A.No.84-0230P

}

ORDER

On July 29, 1985, various defendants in this action brought a motion to dismiss for failure of the plaintiff, Roy P. Briehler, to provide more responsive answers to defendants pursuant to an order of this Court granting a motion to compel more responsive answers.

Magistrate Hagopian found the motion filed by defendants somewhat premature but he did not address the merits of the motion. He recommended that the Court sua sponte dismiss the matter for either lack of prosecution or for failure to comply with a lawful order of this Court.

Plaintiff's file is replete with instances of cavalier disregard for the authority of this Court. Briehler's action demonstrates a pattern of willful

disregard of this Court's orders. For example, the magistrate set a hearing for the motion to dismiss for July 15, 1985 at 10:00 a.m. Although sixty-nine defendants were represented by their attorneys, the plaintiff failed to appear. The plaintiff contends he never received notice of the scheduled hearing and that the notice was not timely served. The magistrate concluded that it was "apparent that Mr. Briehler was timely noticed."

In view of the plaintiff's current and past total disregard of court procedure and his persistent refusal to make himself available to the Court, I must affirm the magistrate's recommendation and dismiss the action. However, in the interests of justice, allowing for the possibility that the plaintiff was not actually or adequately noticed, this dismissal will not become effective until Monday, October 28, 1985 at 10:00

a.m. At that time, if plaintiff wishes to preserve his rights, he must appear before the magistrate so that an orderly hearing and disposition may be had on any outstanding motions, including the defendants' motion to dismiss for failure to provide more responsive answers. Notice of this order shall be sent, in a timely manner, to the plaintiff at all past addresses currently known to the Court, including both the New Jersey and Florida locations.

By order,

Enter:

/s/
Deputy Clerk

/s/ Raymond Pettine

October 15, 1985